



**Law**

**CIVIL LAW AND COMMAND SUCCESSION**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This instruction provides guidance on how to comply with federal fiscal law and federal ethics laws in the AFOATS training environment. It also contains guidance on command succession procedures in AFOATS. It contains guidance previously included in AFOATSI 36-2017, *AFROTC College Program*. It applies to all federal employees (active duty and civilian) assigned to AFOATS. It applies to Air Force Junior ROTC units only when activities are conducted on a DoD Installation (paragraph 1.3.2) or in an Air Force uniform (paragraph 1.6). Although this instruction is not punitive, some provisions (contained in paragraphs 1.2, 1.3, 1.4, 1.5, 1.7, and 2) are based on federal criminal laws and DoDD 5500.7, *Joint Ethics Regulation*, which can be the basis of disciplinary action or criminal prosecution.

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## **CHAPTER 1**

### **1. Relationships With Private Organizations and Private Funds**

1.1. Background. All AFOATS organizations, except for Air Force Junior ROTC units, are federal entities for purposes of applying government ethics rules and federal fiscal law. Cadet wings, cadet drill teams, cadet color guards and honor guards, and other cadet organizations set up or directed by Air Force Reserve Officer Training Corps (AFROTC) detachment cadre are extensions of the detachment for ethics and fiscal law purposes. AFOATS units interact with AFROTC host universities and with private organizations, such as squadron or trainee activity funds, civilian and enlisted councils, Arnold Air Society (AAS) and Silver Wings (SW) chapters, Scabbard and Blade and Pershing Rifles chapters, alumni interest groups, cadet booster clubs, and office-based coffee funds. Relationships between AFOATS units and private organizations must abide by federal laws and rules on ethics and the provisions of federal fiscal law.

1.2. Basic Principles. The following principles of government ethics and fiscal law have particular importance to AFOATS operations:

1.2.1. Federal appropriated and non-appropriated funds must be used only for purposes authorized by Congress. Federal resources generally may not be used to support the activities of non-federal entities.

1.2.2. Except as specifically authorized by Congress, only federal appropriated funds may support the operations of federal agencies. Congress has provided that host universities may provide some support for ROTC operations. Air Force units may not solicit for funds or raise funds.

1.2.3. Air Force employees acting on duty time or in their official capacities may not conduct private organization activities, manage private organization activities, recruit for private organizations, or endorse private organizations or their activities.

1.2.4. Air Force organizations may, under certain circumstances, provide limited logistical support to private organization activities, except for fundraising and membership drives. Such logistical support generally involves the loan of equipment or facilities to private organizations, but it does not include the expenditure of federal funds, the consumption of federal supplies, or the services of federal employees.

1.2.5. Air Force employees may not play management roles in private organizations by virtue of their official positions. Air Force employees may, however, participate in and manage private organizations in their private capacities, on their own time.

1.3. Non-Federal Entities (NFE). The involvement of AFOATS trainees in private organizations can enhance the overall training experience. However, there are limits to the official involvement of AFOATS cadre in these organizations.

1.3.1. Cadre Role. AFOATS personnel acting in their official capacities may not dictate the organization of private groups, appoint their officers, or direct their activities. *EXCEPTION: Host university rules may require organizations consisting of AFROTC cadets to have faculty advisors, who may be required to play a limited management role. For further guidance on faculty advisors, see paragraph 1.5.3 below.* While unit commanders may not direct the activities of private organizations, misconduct or blatant mismanagement by members of NFEs may reflect upon a trainee's potential for officership. Therefore, private activities may be the basis for counseling and other administrative action regarding the trainee's status or benefits (for example, demerits, conditional events, or investigation for disenrollment for failure to maintain military retention standards). Nothing in this paragraph prevents AFOATS cadre from considering trainees for leadership credit based on their private organization activities.

1.3.2. NFE Activities in Government Facilities. Before allowing NFEs to operate within federal facilities (including, for purposes of some rules, dedicated AFROTC facilities), unit commanders must ensure that their activities comply with Air Force and Department of Defense (DoD) instructions. Some of the restrictions below derive from DoD Instruction 1000.15, *Private Organizations on DoD Installations*, which defines "DoD installations" to include AFROTC detachment workplaces. Other restrictions derive from AFI 34-223, *Private Organization (PO) Program*, which applies only to Air Force installations and does not apply to AFROTC detachments. Any of the restrictions below that apply only to "Air Force bases" should not be interpreted to apply to AFROTC detachments.

1.3.2.1. NFEs may not operate “frequent or continuous resale activities” on Air Force bases. There are limited exceptions for thrift shops, museum gift shops, and group purchasing arrangements (such as office coffee funds). This prohibition does not apply to activities in AFROTC detachment facilities, since they do not occur on Air Force installations.

1.3.2.2. Army and Air Force Exchange Service (AAFES) and Defense Commissary Agency regulations prohibit the resale of AAFES and Commissary merchandise, on or off military installations. NFEs are prohibited from any activities on Air Force bases that compete with AAFES or Services activities

1.3.2.3. NFEs are prohibited from selling alcoholic beverages on Air Force bases.

1.3.2.4. NFEs operating on DoD installations (including dedicated AFROTC detachment facilities) may not use the name, abbreviation, or seal of any military service or military installation in their organizational names.

1.3.2.5. NFEs that operate on Air Force bases and maintain average monthly assets in excess of \$1,000 over a three-month period must obtain written approval from the installation commander. Contact the base staff judge advocate (SJA) or services squadron for guidance on chartering and approval procedures.

1.3.2.6. Any NFE desiring to conduct a fundraising activity on an Air Force base must comply with that base’s procedures for approval of fundraisers. Contact the base SJA or Services Squadron for approval procedures.

1.3.2.7. NFEs are responsible for ensuring their own compliance with federal, state, and local laws concerning safety, environmental compliance, and tax liability. Air Force judge advocates cannot provide legal advice to NFEs. NFE members should consult local government offices, such as Internal Revenue Service regional offices and state revenue offices, to obtain information on legal requirements.

1.3.2.8. If an NFE is to engage in potentially dangerous activities on a DoD installation (including dedicated AFROTC detachment facilities), the commander may require the NFE to obtain an appropriate amount of liability insurance.

1.3.2.9. NFEs that operate on DoD installations (including dedicated AFROTC detachment facilities) may not deny membership unlawfully to any person because of race, color, creed, sex, age, disability, or national origin.

1.3.3. NFE Activities Outside DoD Installations. NFE activities occurring outside DoD installations are not governed by Air Force or supporting-base requirements regarding formal organization and chartering. Except as provided by local laws or host university rules, the organization members can decide for themselves whether to establish a formal charter and how to organize themselves. No written approval from the Air Force is necessary for such organizations to operate, even if the organization is composed entirely of Air Force members or trainees.

1.4. Other Private Organizations. Unit commanders should maintain friendly relations with Air Force or university-related NFEs, including Air Force Association (AFA) chapters, Civil Air Patrol units, and

alumni interest groups. Air Force members are free to participate in such organizations on their own time, in their private capacities. However, Air Force personnel must not accept leadership or management roles in private organizations if the roles are offered because of the Air Force member's official position.

1.5. Formal Contacts With Private Organizations. In the AFOATS environment, there are two types of officials who serve as formal links between AFOATS commanders and private organizations: liaisons and faculty advisors.

1.5.1. Liaisons. Commanders may appoint (or personally serve as) liaisons to private organizations. AFROTC detachment commanders must appoint liaisons to any AAS or SW units operating at their host university. AFROTC detachment commanders must appoint, or personally serve as, liaisons to AAS national headquarters units when their AAS squadrons are hosting regional or national AAS/SW conclaves. The purpose of the liaison is to maintain communications with the private organizations, to monitor private organization activities, and to represent Air Force interests to the leadership of the private organization. Liaisons may not play management roles in private organizations. "Management" includes directing the activities of the organization and determining how organization resources are used.

1.5.2. Use of the Term "Advisor". Traditionally, AAS has applied the term "advisor" to AFROTC cadre members who work with AAS and SW units. Nothing in this instruction prohibits the use of this term in reference to detachment liaisons to AAS and SW units. However, while AFROTC detachment liaisons/advisors may provide advice and suggestions to AAS and SW units, liaisons/advisors should not go beyond their advisory role to play management roles in AAS or SW units, except as provided below.

1.5.3. Faculty Advisors. Some host universities require all student organizations to have faculty advisors as a condition for operating on the campus. In such cases, the AFROTC liaison to a student organization may take on the role of faculty advisor. Usually, the duties of the university faculty advisor will be identical to the duties of the detachment liaison. However, some universities may require faculty advisors to play a limited management role in the student organization. In order to fulfill their university faculty responsibilities, cadre members should fulfill their faculty advisor roles in accordance with university policies. However, cadre members should play management roles in student groups only when required by the university, and only to the extent required.

1.5.4. Faculty Advisor Liability. When performing university-mandated management functions in student organizations, cadre members should be aware that federal liability protection may not be available for civil claims arising from their management decisions. Cadre members who believe they need liability protection while performing management functions with student organizations should consider seeking coverage from the university, the private organization, or their own private liability insurance.

1.5.5. Appearance of Air Force Involvement. AFOATS personnel must avoid creating the appearance that the Air Force is directing or sanctioning private organization activities. Therefore, Air Force personnel should not sign contracts on behalf of private organizations (unless they are *required* to do so in their university roles as faculty advisors), and private organization correspondence must not be prepared on Air Force letterhead.

1.6. Fundraising and the Appearance of Official Involvement. NFEs must be advised to avoid giving the appearance that they are raising funds for the Air Force. Commanders should not allow personnel, including trainees, to raise funds while wearing the Air Force uniform or any distinctive, Air Force-provided clothing items.

1.7. Use of Privately-Raised Funds. Organizations consisting of trainees may wish to use their privately raised funds to support activities related to AFOATS training. Other private groups, such as AFA chapters and alumni interest groups, may wish to contribute money to particular AFOATS programs. Such situations should be handled carefully to avoid violations of any of the basic principles described in paragraph 1.2.

1.7.1. Fundraising as a Private Activity. Federal agencies may not engage in fundraising activities or spend money raised from private sources. Therefore, the organization charts and mission directives of AFOATS units and any organizations set up by AFOATS commanders, such as AFROTC cadet wings and drill teams, must not contain any duty positions or missions related to fundraising or spending private money. *EXCEPTION: If university policies permit, members of the AFROTC cadet wing may administer university funds.* The raising of private funds must remain within the purview of NFEs. Cadre may grant trainees leadership credit for financial management roles in private organizations.

1.7.2. Gifts to the Air Force. The Air Force may not accept cash gifts for deposit into specific unit accounts, and Air Force units may not administer private or “slush fund” accounts. It is possible for Air Force units to accept gifts of objects or supplies, in accordance with AFI 51-601, *Gifts to the Department of the Air Force*. However, Air Force gift acceptance procedures are unwieldy, because approval by an installation commander is required.

1.7.3. Gifts to the university. If host university rules permit, private organizations, including student groups, may donate funds or goods to the university for use by Departments of Aerospace Studies. University resources cannot be used for purely Air Force missions, such as AFROTC recruiting (unless the activity is directly linked to university recruiting), field training, and transporting cadets to and from Air Force-mandated physical examinations.

1.7.4. Gifts to Individuals. Private organizations may, of course, give their funds directly to their members or other designated individuals. For instance, a cadet fundraising group may use its funds to help cadets pay for dining-in tickets or to pay travel expenses to help cadets attend professional conferences.

## 1.8. Examples.

1.8.1. An AFROTC cadet organization wants to purchase a photocopier or a computer to place in the Detachment’s cadet staff area for use by cadets. In the university environment, this is permissible, and it may be processed either as a gift to the Air Force (cumbersome) or as a gift to the university (usually preferable).

1.8.2. An NFE wants to “buy down” the cost of dining-in tickets for its members, and it wants to buy the guest speaker’s dinner and a gift on behalf of the cadets. The money will pass directly from the NFE to the conference center hosting the dinner. This arrangement is permissible.

1.8.3. A cadet organization wants to provide money to cadets to reimburse them for their billeting expenses during a base visit. This is permissible.

1.8.4. A squadron Top-3 organization wants to use its funds to upgrade the squadron’s office furniture. Unless the installation commander approves acceptance of the furniture as a gift to the Air Force, this would be an illegal augmentation of appropriated funds.

1.8.5. An AFROTC cadet booster club raises money to construct, equip, and supply a cadet computer lab and then funds monthly Internet access for that lab. The cadets retain control of the computer lab, either on private or university property. This arrangement is permissible.

1.8.6. An AAS squadron raises funds to purchase tickets and hotel reservations for several of its members to attend either an area or national conclave. This arrangement is permissible.

1.8.7. An AFROTC cadet fundraising group wants to donate money to the university to offset the costs of photocopying and Department of Aerospace Studies office supplies used by the cadets during training activities. This would be permissible, subject to university rules. As an alternative, the cadet group could purchase the office supplies and donate them to the university for the use of the department.

1.8.8. An AFROTC cadet booster club raises funds to purchase incentive items to support the AFROTC recruiting effort. Because Air Force recruiting is a federal mission that must be supported only with federal funds, this booster club funding should be used, in accordance with university policies, to recruit for the university. Any recruiting materials purchased with university funds should bear the name or emblem of the university.

1.8.9. An alumni interest group wants to place funds at the discretion of the detachment commander to increase his day-to-day operating resources. Detachments may not set up separate “slush fund” accounts using private money, and private money may not be donated directly to the detachment’s Air Force Operations and Maintenance (O&M) account. However, a private group may donate money to the host university, earmarked for the Department of Aerospace Studies, if university procedures allow it. As an alternative, the private group may donate money directly to cadet NFEs or to cadets themselves. Cadre should not play a management role in the distribution of money to cadet NFEs or individual cadets.

1.8.10. An NFE wants to call itself the “Air Force ROTC Cadet Activity Fund.” The detachment commander should advise the group that DoDI 1000.15 prohibits the use of the term “Air Force” in a private organization’s name, and therefore a group using such a name would not be allowed to operate in the detachment workplace.

1.8.11. The local AFA chapter wants a squadron or detachment commander to serve as a member of its board of directors. Although it is not explicitly stated that the invitation is because of the commander’s position as commander, it appears that the commander’s official position is the only reason for the offer.

The commander may not accept this invitation, because it appears that he is being offered a position in a private organization by virtue of his federal office. The commander may serve as (or appoint) a liaison to the AFA chapter.

1.8.12. An alumnus wants the detachment commander to organize and direct a fundraising effort designed to fund scholarships for AFROTC cadets at the university or to contribute to the Department of Aerospace Studies operating account. The detachment commander should politely decline this request, because it is not permissible for Air Force personnel to raise funds in their official capacities. The commander or other cadre may, during off-duty time and in their personal capacities, participate in the fundraising activities of this or other private organizations. To avoid misperceptions, it is best to allow alumni to take the lead in organizing fundraising activities.

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## CHAPTER 2

**2. Funding from Non-Federal Sources for Official Travel.** Federal law (31 U.S.C. § 1353) prescribes specific requirements for the acceptance of payments by federal employees for official travel from non-federal sources. Universities are non-federal sources for purposes of the law. The federal government may accept payments relating to employee attendance at certain types of functions.

2.1. General. For purposes of this rule, “functions” include any meeting, conference, seminar, speaking engagement, symposium, training course, or similar event, sponsored or co-sponsored by an NFE, that takes place away from a member’s permanent duty station. One example is attendance by AFROTC cadre members at academic conferences or retreats with other university faculty. Participation of AFROTC cadre in base visits with cadets, as a supplement to the AFROTC curriculum, is another example (assuming the host university agrees to co-sponsor the visit). Payment from non-federal sources *is not* authorized for events that are essential to the Air Force mission, such as recruiting, mission-essential training, investigations, inspections, litigation, and staff assistance visits.

2.2. Requirements. Before payment can be accepted from a non-federal source for attendance at a function, the following requirements must be met:

2.2.1. Federal employees may not solicit such payments from non-federal sources. However, after receiving an invitation to attend a function, the employee may inform the non-federal source that there is legal authority for the federal government to accept such benefits.

2.2.2. AFOATS/JA must approve the acceptance of travel benefits in advance.

2.2.3. Employees must be on federal travel orders.

2.3. Receipt of Payments. Employees may not accept reimbursement directly from the non-federal source. They may receive the benefits in kind (for instance, the non-federal source may directly provide transportation or accommodations) or the non-federal source may provide reimbursement in the form of a check made for deposit in the appropriate Air Force account. The employee may then claim reimbursement and note the receipt of any benefits received in kind on a federal travel voucher.



2.4. Partial Reimbursement. If the employee receives only partial reimbursement in kind from the non-federal source for travel expenses incurred, the employee must be reimbursed for the remainder of the travel expense from federal funds. Therefore, a federal fund cite would be required prior to departure.

2.5. Semiannual Report. Any travel payments in excess of \$250.00 per event must be included in the Air Force's semiannual report to Congress, which is due in April and October of each year. AFOATS/JA will collect the necessary information for the report at the time approval is granted for the payment.

2.6. Civilian Employees. Federal civilian employees may accept travel payments directly from tax-exempt organizations under the authority of 5 U.S.C. § 411, if certain requirements are met. Contact AFOATS/JA for details.

2.7. Travel in Private Capacity. The requirements of this section do not apply to non-official travel performed pursuant to voluntary, private activities while the member is in a leave, pass, or permissive temporary duty (TDY) status. Commanders should not place members in leave, pass, or permissive TDY status merely to circumvent the requirements of 31 U.S.C. § 1353.

2.8. Examples:

2.8.1. An AFROTC detachment commander sits on an academic committee at her host university. All members of the panel are expected to travel, at university expense, to an annual, three-day conference in another city. The commander may attend this conference, but this will be "official travel" for purposes of the Joint Federal Travel Regulation. The commander is not a university employee—by serving as a committee member, she is fulfilling the Air Force's obligations to the university under the Air Force-University Agreement. The commander should get advance approval from AFOATS/JA for the non-federal funding, obtain travel orders, and file a travel voucher, noting the receipt of travel benefits from the university.

2.8.2. An AFOATS member is invited to present a scholarly paper at a professional conference. The member's commander or supervisor has determined that the employee's attendance at the event is related to his official duties and will contribute to the accomplishment of the Air Force mission, and therefore official travel orders are appropriate. The professional association hosting the conference has offered to defray part of the member's travel expenses. The Air Force may accept the reimbursement of travel expenses, if offered in kind or by reimbursement to the Air Force. The member should submit a travel voucher, noting the receipt of travel benefits from the association. If the member's commander or supervisor decides not to allow the member to attend the conference in duty status, then the member may attend in leave, pass, or permissive TDY status and accept travel benefits directly from the professional association.

2.8.3. An AFROTC host university offers to pay the travel expenses of a detachment's unit admissions officer (UAO) on a university recruiting visit to another city. The UAO will conduct AFROTC recruiting activities at the event. Neither the Air Force nor the UAO may accept travel benefits from the university. Recruiting is an essential part of the Air Force mission. Therefore, the UAO must make this trip in a duty status, and his travel expenses must be paid by Air Force appropriated funds.

2.8.4. An AFROTC detachment commander wishes to send two of her cadre members to accompany cadets on a base visit, but he has sufficient Air Force funds to pay for only one of them. Therefore, she wishes to use available university funds to pay the travel expenses of the other cadre member. This is permissible, if the university is willing to co-sponsor the base visit. The cadre member should get advance approval from AFOATS/JA for the non-federal funding, obtain travel orders, and file a travel voucher, noting the receipt of travel benefits from the university.

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## CHAPTER 3

**3. Command Succession.** AFI 51-604, *Appointment to and Assumption of Command*, governs command succession procedures in the Air Force. The preferred method of command succession is appointment by a superior commander. Detachment commanders may not assume command; a superior commander must appoint them.

### 3.1. Command Appointment Authorities.

3.1.1. The AFOATS Commander will appoint the HQ AFROTC Commander, the Officer Training School (OTS) Commander, and the AFOATS Squadron Section Commander.

3.1.2. The OTS Commander normally will appoint OTS squadron commanders.

3.1.3. The HQ AFROTC Commander normally will appoint AFROTC region and detachment commanders.

3.2. Command Appointment Procedures. Prior to a change of command, units should contact AFOATS/JA and provide the name, rank, and SSN of the new commander, as well as the requested date of appointment. AFOATS/JA will prepare and staff the appointment order and provide the signed order to the requesting unit.

3.3. Temporary Absences of a Commander. Air Force policy (AFI 51-604, Paragraph 3.4) provides that the absence or disability of a commander for short periods of time does not normally warrant succession to command by another officer. As a rule of thumb, any absence of less than two weeks should be considered a "short absence." AETC policy (Memorandum, AETC/CC, 24 Apr 00) provides that a commander should not relinquish command unless he or she will be unable to communicate readily with the unit staff during the absence. Absences of AFROTC detachment commanders attending field training encampments normally do not warrant succession to command by another officer.

3.4. Gaps in Command Succession. If an OTS squadron or an AFROTC detachment has a gap in command succession due to the reassignment or retirement of a commander prior to the arrival of the commander's replacement, the OTS Commander or AFROTC Region Commander will determine whether to appoint or allow assumption of a temporary successor commander in the interim.

3.5. Command Authority. Command authority is required to administer punishment under the Uniform Code of Military Justice (UCMJ) and to perform certain sensitive personnel actions, such as establishment of unfavorable information files and control rosters. During the temporary absence of a

commander, the commander can designate a representative to act in the commander's name to perform most functions, with the exception of UCMJ actions and highly sensitive personnel actions.

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